



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
One Blackburn Drive
Gloucester, MA 01830-2298

December 15, 2003

David E. Frulla, Shaun M. Gehan and Andrew D. Herman
Brand and Frulla
923 Fifteenth Street, NW
Washington, D.C. 20005

Dear Messrs Frulla, Gehan and Herman:

Thank you for your October 16, 2003, request on behalf of The Associated Fisheries of Maine, Inc. and the Trawlers Survival Fund pursuant to Section 515 of Public Law 106-554 to cease dissemination of the revised biological reference points for the northeast multispecies stock complex ("New England groundfish") contained in the draft document for Amendment 13 to the Northeast Multispecies Fishery Management Plan ("Draft Amendment 13"). The Northeast Regional Office within the National Marine Fisheries Service ("NOAA Fisheries") is the responsible office for this action. My office has completed its review of your request in light of the National Oceanic and Atmospheric Administration ("NOAA") Information Quality Guidelines ("Guidelines") and has the following response.

We note at the outset that Draft Amendment 13 and its supporting science, including the revised biological reference points at issue in this request, have been subjected to formal, independent, external peer review by an international panel of leading fisheries experts. The peer reviewers' comments and the Agency's responses thereto are posted on the Northeast Fisheries Science Center (NEFSC) website at: <http://www.nefsc.noaa.gov/groundfish>. The peer review conducted in this instance meets the proposed standards for peer review found in the Office of Management and Budget "Proposed Bulletin under Executive Order 12866 and Supplemental Information Quality Guidelines" (www.whitehouse.gov/omb/inforeg/peer_review_and_info_quality.pdf published August 29, 2003), which states that peer review should be conducted with genuine independence and objectivity under proper and clearly-articulated procedures. Further, the methodologies, analyses and conclusions used to develop the revised biological reference points were fully described in the final report of the Working Group on Re-Evaluation of Biological Reference Points for New England Groundfish, which is also posted on the NEFSC website address provided above. As evidenced by the wealth of information posted on NEFSC website, the development of draft Amendment 13 and its supporting science has been fully transparent with substantial opportunity for input from the public.

Turning to the specifics of your request, it alleges that the revised biological reference points contained in Draft Amendment 13 violate the utility and objectivity standards of the Guidelines. Regarding the utility standards, the Guidelines state that "(u)tility means that disseminated information is useful to its intended users. 'Useful' means that the content of the information is



helpful, beneficial, or serviceable to its intended users, or that the information supports the usefulness of other disseminated information by making it more accessible or easier to read, see, understand, obtain, or use." Further, as stated in Part II of the Guidelines, "NOAA strives to continually improve the usefulness of its data and information products." Your request fails to state how the biological reference points fail to meet NOAA's standard for utility.

New England groundfish are managed under the New England Fishery Management Council's Northeast Multispecies Fishery Management Plan. Under this plan, overfishing definitions, including biomass thresholds and targets and fishing mortality thresholds and targets, are required and have been previously specified. The revised biological reference points contained in Draft Amendment 13 were developed in February, 2002, by the Working Group on Re-Evaluation of Biological Reference Points for New England Groundfish ("Working Group"). The Working Group reviewed the scientific adequacy of the existing overfishing reference points (biomass producing maximum sustainable yield, or Bmsy, and the fishing mortality rate associated with maximum sustainable yield, or Fmsy). In developing the revised biological reference points, the Working Group examined significant new data and methodological improvements available to researchers for conducting a re-analysis of the existing biological reference points. The revised biological reference points were developed to ensure consistency between age-structured assessment models and reference points and thereby improve the scientific basis for groundfish fisheries management. Therefore, the revised biological reference points comply with the utility standards because they are useful to the intended users (New England groundfish fisheries managers) and are an improvement over previously available information.

Regarding the objectivity standards, the Guidelines divide NOAA information products into seven categories. Draft Amendment 13 is categorized as a Natural Resource Plan under the Guidelines and, as such, must: (1) Be developed according to published standards; (2) use information of known quality or from sources acceptable to the relevant scientific and technical communities; (3) be based on the best available scientific information; and (4) present information in the proper context. Further, the Guidelines state that, "(i) nformation that is subjected to formal, independent, external peer review is presumed to be objective. The requestor has the burden of rebutting that presumption." Guidelines, Part III.A.3. Following is information on each of the four objectivity criteria.

Published Standards

Draft Amendment 13 was developed according to published standards, which include the Magnuson-Stevens Fishery Conservation and Management Act, the National Environmental Policy Act and the National Standards Guidelines at 50 CFR Part 600, Subpart D.

Information of Known Quality

The information used in support of the management measures in Draft Amendment 13 is of known quality and from sources acceptable to the relevant scientific and technical communities. As discussed in greater detail below, that information, particularly the revised biological

reference points, was subjected to formal, external peer review and was posted on the NEFSC web site, making it widely available to the public.

Best Available Scientific Information

The revised biological reference points in Draft Amendment 13 were developed using the best available scientific information. As previously stated, the Working Group was convened in February 2002. The Working Group included six population dynamics-stock assessment experts from outside NOAA Fisheries' Northeast Region, and was supported by twelve staff members of the NEFSC Northeast Fisheries Science Center, including the NOAA Fisheries Chief Scientist. The resulting analyses and revised biological reference points are fully described in the final report of the Working Group.

In February 2003, NOAA Fisheries convened a formal, external peer review panel to review the science supporting New England groundfish management, including the revised biological reference points. The Chairman of the peer review panel produced a summary consisting of a collation of individual reviewer's comments. This summary included the following statement:

Most of the stock assessment and projection methodologies currently applied by the NEFSC provide an adequate scientific basis for fisheries management. The ADAPT VPA and AGEPRO methodologies provide a rigorous and adequate basis for assessing stock biomass and fishing mortality rate, making projections, evaluating the differences in potential consequences of alternative possible fisheries management policies, and for taking into account parameter and important model structure uncertainties.
(Emphasis added)

The peer reviewers did not produce a consensus summary report. Instead, each reviewer produced an individual report consisting of their review comments. The NEFSC compiled a comprehensive summary of the points raised by each reviewer and publicly responded to the comments of the peer reviewers. In evaluating the peer review comments, the NEFSC concluded that:

With due consideration to the peer reviewer's comments (as elaborated below), data and results used for the various stocks are appropriately calculated and constitute, in our opinion, the best science available with which to evaluate the status of these resources and support the development of Amendment 13 to the Northeast Multispecies FMP. There are no alternative assessments that were considered by the peer reviewers to be superior to those presented by the GARM (NEFSC 2002c) or updated at SARC 36 (NEFSC 2003). Estimates of F_{MSY} and their proxies are robust to uncertainties in the population dynamics even for fully-rebuilt stocks, and estimates of B_{MSY} are the most appropriate values, given full consideration of alternative estimates and their technical bases.

Information in the Proper Context

The information contained in Draft Amendment 13 is presented in an accurate, clear, complete and unbiased manner. Clear distinctions have been drawn between policy choices and the supporting science upon which those choices are based. The supporting materials, information, data and analyses used within Draft Amendment 13 have been properly referenced and made publicly available on the NEFSC website to ensure transparency.

As noted, the science supporting New England groundfish management, including the revised biological reference points, has been subjected to formal, external peer review. That information is therefore presumed to be objective under the Guidelines. The peer reviewers concluded that the NEFSC's stock assessment and projection methodologies formed an adequate scientific basis for the fisheries management actions contained in Draft Amendment 13.

In addition to having undergone formal, external peer review, Draft Amendment 13 and its scientific underpinnings have been subjected to a thorough and significant degree of public scrutiny, as evidenced by the publication and web-based dissemination of documents, meeting summaries and comments regarding these various issues. In all regards, the Draft Amendment 13 supporting documentation meets and exceeds the Guidelines standards for transparency and reproducibility.

Your request for correction also asserts: 1) That NOAA Fisheries has refused to undertake the comparative analyses recommended by the peer review panel, in particular with respect to the age structured production model ("ASPM") approach advocated by Dr. Douglas Butterworth; and 2) that NOAA Fisheries has not met in substance many of the other scientific criticisms raised by the peer review panel. One example is cited, i.e., refusing to investigate the feasibility of reaching biomass targets for all 19 species simultaneously as requested by the panel.

The first of these assertions is incorrect. The NEFSC has maintained an ongoing correspondence with Dr. Butterworth about his model, with the goal of understanding the differences between it and the model used by the NEFSC in calculating the revised biological reference points under dispute. The most recent correspondence from the NEFSC to Dr. Butterworth on this topic was on September 12, 2003, when a detailed letter was sent identifying technical problems with his modeling approach. NOAA notes that Dr. Butterworth's model has not yet been subjected to formal peer review.

The second of these assertions is vague. Science is an ongoing process, and failure to have addressed all scientific criticisms of a peer review panel does not imply that the scientific basis of the revised biological reference points is not the best scientific advice available at the time. Without a more specific charge, it is impossible for NOAA to determine whether this assertion has merit.

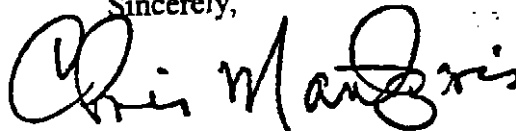
Furthermore, your assertion that NOAA Fisheries has refused to undertake comparative analyses recommended by the peer review panel, in general, or with respect to the ASPM approach in particular, is inaccurate. Based on the information above, the revised biological reference points

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included in Draft Amendment 13 have been determined to be based on the best available scientific information.

In conclusion, your request for correction of the revised biological reference points is denied.

You may file an appeal of this denial, as outlined in Part III.D.1 of the Guidelines, within 30 calendar days of the date of this correspondence. Your appeal must include: (1) The requestor's name, current home or business address, and telephone number or electronic mail address; (2) a copy of the original request and any correspondence regarding the initial denial (including a copy of this document); and (3) a statement of the reasons why you, the requestor, believe this decision is in error. The complete appeal must be submitted to: NOAA Section 515 Officer, NOAA Executive Secretariat, Herbert C. Hoover Building - Room 5230, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Sincerely,



Patricia A. Kunkel
Regional Administrator